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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/788,472	03/01/2004	Karl Weber	Q79527	7541
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SUITE 800				
WASHINGTON, DC 20037				
EXAMINER				
ZHOU, YONG				
ART UNIT		PAPER NUMBER		
2619				
MAIL DATE		DELIVERY MODE		
08/21/2008		PAPER		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

**Advisory Action
Before the Filing of an Appeal Brief**

Application No.

10/788,472

Applicant(s)

WEBER, KARL

Examiner

Yong Zhou

Art Unit

2619

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 30 July 2008 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.
b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.
Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
(a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
(b) ☐ They raise the issue of new matter (see NOTE below);
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): _____.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☒ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
The status of the claim(s) is (or will be) as follows:
Claim(s) allowed: None.
Claim(s) objected to: None.
Claim(s) rejected: 1-11.
Claim(s) withdrawn from consideration: None.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:
See Continuation Sheet.
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08) Paper No(s). _____.
13. ☐ Other: _____.

/Chirag G Shah/
Supervisory Patent Examiner, Art Unit 2619

Continuation of 11, does NOT place the application in condition for allowance because: Applicant argues that amended element rejected under U.S.C. 112, first paragraph, in the Final action has support in the original specification. In response, the Examiner respectively disagrees with Applicant's arguments. There is no disclosure in the original description or figure for "sending at least of realtime data telegrams and non-realtime data telegrams" in the third phase during the transmission cycle.

Applicant further argues that Krause does not disclose or suggest "in a third phase during the transmission cycle, sending at least one of real-time data telegrams and non-real-time data telegrams while suppressing the transmission of those of the non-real-time data telegrams for which the transmission cannot be concluded during the third phase" and that in the whole section 13, of which data transmission 15 are a part of, only realtime data is transmitted. Neither is disclosed in Krause which would lead to the conclusion that data telegrams for the organization of the data transmission represent non-realtime data.

In response, the Examiner respectively disagrees with Applicant's arguments. Krause discloses stated that "In the first section 13 which is intended for the transmission of real-time-critical data, a certain period is reserved for transmitting data telegrams for the organization of the data transmission 15 before the transmission of the actual real-time-critical data telegrams of which only the data telegram 16 is designated for reasons of clarity. The data telegrams for the organization of the data transmission 15 contain, for example, data for the timing synchronization of the users and switching units of the data network and/or data for recognizing the topology of the network. After these data telegrams have been sent, the real-time-critical data telegrams or, respectively, the data telegram 16 are transmitted." ([0034], right col., lines 21-34) It is clear that blocks 15 are reserved for control data transmission before transmission of actual realtime data telegrams and that the data telegrams carried over blocks 15 (equivalent to claimed phase 3) can be realtime critical (e.g., synchronization data) or non-realtime (e.g., network topology data). Even if blocks carried only realtime data (no network topology data), Vange would still meet the amended claim element "sending one of realtime data telegrams and non-realtime data telegrams..".

Applicant provides further arguments which do not render claims allowable after the prosecution on the merit is closed.